No. 80-1483

ALEXANDER L. ST
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

MILLEDGEVILLE FARMER'S ELEVATOR CO.,
an Illinois Corporation,

Petitioner,

vs.

ERNEST WAGNER and ACHSIA WAGNER;
and STANLEY S. WAGNER,

Respondents.

On Petition For Writ Of Certiorari To The
Appellate Court Of Illinois, Second District

BRIEF OPPOSING WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

The question presented is whether or not the Petitioner is entitled to review of the decision of the Appellate Court of Illinois, Second District, that the Petitioner could not appeal from the decision of the trial court because the trial court ordered a new trial on the issue of damages, and the said order of the trial court was not a final appealable order under the Illinois Supreme Court Rules.

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED FOR REVIEW	i
TABLE OF AUTHORITIES	iii
ARGUMENT	1
CONCLUSION	5

TABLE OF AUTHORITIES

Cases

Johnson v. Northwestern Mem. Hosp., 74 Ill. App. 3d 694, 393 N.E. 2d 712, 30 Ill. Dec. 676	3
Lawrence v. Elmwood Elev., 258 Ill. App. 101, 104, 105 & 106	4
Lynch v. Smith, 154 Ill. App. 469, 470, 471 & 472	4
Market St. Ry. Co. v. Railroad Commission of State of Cal., Cal. 1945, 65 S.Ct. 770, 324 U.S. 458, 89 L.Ed. 1171; rehearing denied 65 S.Ct. 1020, 324 U.S. 890, 89 L.Ed. 1438 ...	2
North Dakota State Bd. of Pharmacy v. Snyder's Drug Stores, Inc., N.D. 1973, 94 S.Ct. 407, 414 U.S. 156, 38 L.Ed. 2d 379	2, 3
Panaco Corp. v. Standard Co-Operative Elevator Co., 56 Ill. App. 3d 1005, 372 N.E. 2d 1143, 1143 & 1144; 14 Ill. Dec. 864, 864 & 865	4
Radio Station WOW v. Johnson, Neb. 1945, 65 S.Ct. 1475, 326 U.S. 120	2, 3
Reinhardt v. Blanchard, 78 Ill. App. 26, 27	4
Watt v. Scofield, 76 Ill. 261, 263 & 264	4

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ARGUMENT

Section 1257 of Title 28 of the United States Code permits review by the United States Supreme Court by a Writ of Certiorari only from final judgments or decrees. The Petitioner, Milledgeville Farmer's Elevator Co., has clearly demonstrated in its Petition for Writ of Certiorari that there was no final judgment entered by any

court; and that under state law the matter was not appealable at this stage of the proceeding. The opinion of the Appellate Court of Illinois, Second District, specifically stated that because there still remained a trial on the issues of damages, the trial court did not enter an order which was final and appealable.

This honorable Court has held that the general rule of the federal judicial system is that no appeal lies until litigation has been concluded in the court of the first instance, and such rule has added force when the United States Supreme Court was asked to review a judgment of the highest court of a state under former Section 344 of Title 28. *Radio Station WOW v. Johnson*, Neb. 1945, 65 S.Ct. 1475, 326 U.S. 120, and 89 L.Ed. 2092. A state court judgment must be final in two senses: it must be subject to no further review or correction in any other state tribunal, and it must be an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. *Market St. Ry. Co. v. Railroad Commission of State of Cal.*, Cal. 1945, 65 S.Ct. 770, 324 U.S. 548, 89 L.Ed. 1171; rehearing denied 65 S.Ct. 1020, 324 U.S. 890, 89 L.Ed. 1438.

The finality requirement limiting the Supreme Court's review of state court judgments serves several ends: (1) it avoids piecemeal review by federal courts of state court decisions, (2) it avoids giving advisory opinions in cases where there may be no real "case" or "controversy" in the sense of Article III, and (3) it limits federal review of state court determinations of federal constitutional issues to leave at a minimum federal intrusion in state affairs. *North Dakota State Bd. of Pharmacy v. Snyder's Drug Stores, Inc.*, N.D. 1973, 94 S.Ct. 407, 414 U.S. 156, 38 L.Ed. 2d 379, 384.

Mr. Justice Frankfurter, writing for the court in *Radio Station WOW v. Johnson*, 326 U.S. 120, 124, 89 L.Ed. 2092, 65 S.Ct. 1475, summarized the requirements by Congress that in appeals from federal district courts as well as in review of state court decisions the judgments be "final": "This requirement has the support of considerations generally applicable to good judicial administration. It avoids the mischief of economic waste and of delayed justice. Only in very few situations where intermediate rulings may carry serious public consequences, has there been a departure from this requirement of finality for federal appellate jurisdiction. This prerequisite to review derives added force when jurisdiction of this Court is invoked to upset the decision of a state court. Here we are in the realm of potential conflict between the courts of two different governments. And so, ever since 1789, Congress has granted this Court the power to intervene in State litigation only after 'the highest court of a State in which a decision in the suit could be had' has rendered a 'final judgment or decree', Sec. 237 of the judicial code, 28 USC 344(a) [28 USCS § 344(a)]. This requirement is not one of those technicalities to be easily scorned. It is an important factor in the smooth working of our federal system." *North Dakota State Bd. of Pharmacy v. Snyder's Drug Stores, Inc.*, 94 S.Ct. 407, 414 U.S. 156, 38 L.Ed. 2d 379, 383 & 384.

A requirement that a judgment must be final if it is to be appealable is not a denial of due process. If litigants could appeal piecemeal from every order entered by a trial court, the upper courts of Illinois would be inundated with appeals. The purpose of the rule is to prevent a multiplicity of suits and piecemeal appeals. *Johnson v. Northwestern Mem. Hosp.*, 74 Ill. App. 3d 694, 393 N.E. 2d 712, 30 Ill. Dec. 676, 676 & 677.

The Courts of the State of Illinois under the Illinois Supreme Court rules have not provided present review through the Illinois Supreme Court, but on the contrary have ruled that no appeal is possible at this time by the Petitioner, in that there was no final judgment in the trial court. This militates against any Writ of Certiorari in that the finality requirement of Section 1257 of Title 28 of the United States Code has not been satisfied.

There is a vast difference between the court denying a motion for judgment n.o.v., and granting said motion and ordering a new trial on the issue of damages. In the former situation, the judgment is clearly final in that no further proceedings can be had in the nisi prius court. In the latter situation, the trier of fact must still determine the Plaintiff's damages.

Petitioner's assertion that the cases indicated that a landlord's lien was intended to apply only to crops still growing or upon the tenant's property and not those removed and sold, is spurious and completely contrary to the cases decided by the Appellate Courts and the Supreme Court of the State of Illinois. *Lynch v. Smith*, 154 Ill. App. 469, 470, 471 & 472; *Lawrence v. Elmwood Elev.*, 258 Ill. App. 101, 104, 105 & 106; *Panaco Corp. v. Standard Co-operative Elevator Co.*, 56 Ill. App. 3d 1005, 372 N.E. 2d 1143, 1143 & 1144; 14 Ill. Dec. 864, 864 & 865; *Reinhardt v. Blanchard*, 78 Ill. App. 26, 27; *Watt v. Scofield*, 76 Ill. 261, 263 & 264.

CONCLUSION

The Petitioner has submitted nothing which would justify the granting of its Petition for a Writ of Certiorari.

Respectfully submitted,

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March 24, 1981